IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

RCRev..No. 273 of 2007()

(AGAINST THE JUDGMENT IN RCA.79/2005 DATED 11/1/2007 OF THE VI TH ADDL.DISTRICT COURT AMD RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM IN RCP.117/2000 DATED 28/01/2005 OF THE RENT CONTROL COURT, ERNAKULAM)
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REVISION PETITIONER:APPELLANT/RESPONDENT:

LAL PRODUCTS, 39/345, CHANDRIKA SOAP
CHANDRIKA SOAP COMPANY, KARIKKAMURY CROSS ROAD,
KOCHI-11.

BY ADV. SRI.A.BALAGOPALAN
SRI.BASIL MATHEW

RESPONDENTS: RESPONDENTS/PETITIONERS:
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1. **GOURI, AGED 65, D/O.VELU,**
   KALAVAMPARA, KAITHARAM MURI, KOTTUVALLY.

2. **BALAN, AGED 62, S/O.VELU,**
   KANJIRAMPARAMBIL HOUSE, KAITHARAM MURI,
   KOTTUVALLY.

3. **LEELA, AGED 55, D/O.VELU,**
   KANIYAMPARAMBIL HOUSE, KARIKAMURI, KOCHI-11.

4. **MALATHI, D/O.VELU, AGED 52,**
   KANIYAMPARAMBIL HOUSE, KARIKAMURI, KOCHI-11.

5. **SHYAMALA, AGED 49, W/O.VIDHYADHARAN,**
   KANIYAMPARAMBIL HOUSE, KARIKAMURI, KOCHI-11.

6. **NISHA, AGED 37, D/O.VIDHYADHARAN,**
   KANIYAMPARAMBIL HOUSE, KARIKAMURI, KOCHI-11.

7. **AYSHA DEVI, AGED 36, D/O.VELU,**
   KANIYAMPARAMBIL HOUSE, KARIKAMURI, KOCHI-11.

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 18/08/2007 ALONG WITH RCR NO. 461 OF 2004 RCR NO. 462 OF 2004 AND RCR NO. 463 OF 2004, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

R.C.R. No. 273 of 2007

Dated, this the 18th day of August, 2007

ORDER

Balakrishnan Nair, J.

The appellant in R.C.A.No.79/2005 has come up in revision challenging the appellate judgment in the said appeal. The order of the Rent Controller in R.C.P.No.117/2000 dated 28.1.2005 is upheld by the impugned judgment dated 11.1.2007. The brief facts of the case are the following:

2. One Mr. Sreedharan who was a lunatic was the owner of 20 cents of land in which there were a few buildings. He was a bachelor and since there was no one to look after him, the District Court in a Lunacy O.P.151/1972 appointed Adv. Mr. P.P.Prathapan as the guardian of the said Sreedharan. The petitioner herein got the building on rental basis from the said court receiver. Sreedharan died on 24.1.1996. Later in 1998 the entire landed property of Sreedharan including the buildings thereon were handed over to the landlords, the respondents herein, by the court receiver as per order of the District Court in I.A.No.164/1998 in the above Lunacy O.P. The landlords in the year 2000 filed a few Rent Control Petitions against the various tenants in occupation of the aforementioned buildings. R.C.P.No.117/2000 was filed by the landlords against the petitioner herein who was occupying the building bearing door No.39/345. The grounds taken were under sec.11(2)(b) and 11(3) of the

Kerala Buildings (Lease and Rent Control) Act (for short, the Act). Mr. Ashok Kumar, the son of the 3rd respondent herein, required the said building for his residence. He has no residence of his own. He is depending upon the 3rd respondent herein, his mother, for his accommodation. He is married and he wants to have a separate residence. Neither the landlords nor Ashok Kumar have any separate building suitable for residential accommodation. The petitioner herein, the tenant which is a firm, is using the said building for the residential accommodation of its employees. The tenant resisted the application stating that the landlords have no title to the property. It was also asserted that Mr. Ashok Kumar is residing in his own house. There are several other buildings in the possession of Mr. Ashok Kumar in the city suitable for his residence. The purpose of getting the building evicted is to sell it, it was contended.

3. The trial of the Rent Control Petitions were held jointly. On the basis of the above pleadings the Rent Controller raised the issues. From the side of the landlords PWs.1 to 4 were examined. From the side of the tenants RWs.1 to 4 were examined. Mr. Ashok Kumar was PW.4. Exts.A1 to A14 were marked from the side of the landlords and Exts.B1 to B14(a) were marked from the side of the tenants. As court exhibits Exts.C1, C1(a), C2 and C2(a) were also marked.

4. The Rent Controller allowed the applications on both grounds.

The Appellate Authority reversed the finding under sec.11(2), but affirmed the decision under sec.11(3). The revision petitioner attacks the said finding of the Appellate Authority under sec.11(3). In this revision also the dispute regarding title was raised. But, in view of the judgment rendered by us in R.C.Rev.463/2004, the said point does not survive for consideration. The other points raised by the learned counsel for the petitioner are the following:

1. Mr. Ashok Kumar is not a dependent for the purpose of sec.11(3) of the Act.

2. The bona fide need of Mr. Ashok Kumar is not established.

3. The case is governed by the first proviso to sec.11(3) as Mr. Ashok Kumar has got other suitable accommodation.

4. The learned Munsiff who heard the matter is not vested with the powers of the Rent Controller by appropriate notification under the Act. Therefore the order is passed without jurisdiction.

5. The first point was explained and amplified by the learned counsel for the petitioner by contending that the landlords have stepped into the shoes of the court receiver. The court receiver cannot have any

dependent. Since the landlords stepped into his shoes, they also cannot have any dependent. So, Mr. Ashok Kumar cannot be treated as a dependent of the landlords for the purpose of sec.11(3). The above contention cannot be accepted as the landlords were not appointed as court guardian in the place of the previous court guardian. But, they were given possession of the properties on finding that among the competing claimants, they are the legal heirs eligible to get possession of the properties and the Lunacy O.P. was closed also in view of the death of the lunatic. So, the landlords herein are in possession of the property as the legal heirs and therefore they can have dependents. So, the aforementioned contention of the learned counsel for the petitioner cannot be accepted.

6. On the second point the learned counsel for the petitioner submits that Mr. Ashok Kumar can very well live with his mother in her residential building. Nobody else is residing there. But, based on the evidence on record, the Appellate Authority found that his elder brother who was earlier employed at Guruvayur is presently working at Ernakulam. He is not having any separate residence and his wife is a housewife and they are residing with their mother. As per the family arrangement it appears that the building in which the mother is residing is allotted to another brother. Whatever be that, if a married son wants to have a separate marital home, even if there are facilities for residence in his

mother's house, the same cannot be described as not a bona fide need. In our society the married son at the earliest separates and sets up his own home. So, the desire of Mr. Ashok Kumar for the same and his requirement can only be described as a bona fide need. The facts in this case speaks for themselves on this point.

7. The next contention raised is that the first proviso will apply as there are other buildings available. But the Appellate Authority on the basis of the evidence before it found that the only building available for residential purpose is the building occupied by the petitioner herein. The Appellate Authority, based on the evidence on record, also noticed that a few rooms were available, but they were good only for business purposes. The building in which the lunatic was residing was not found suitable for residential accommodation. The present tenanted premises is occupied by the employees of the tenant as a residential accommodation. The Appellate Authority was not impressed by the contention of the tenant that there are other buildings suitable for residential purposes. The said view of the Appellate Authority is a finding of fact, with which we cannot interfere under sec.20.

8. Finally, the learned counsel pointed out the lack of jurisdiction of the Munsiff to hear the Rent Control Petition. The de facto doctrine will save the judgment even assuming the contention of the petitioner is correct. The learned counsel for the respondents submitted that there is,

in fact, a notification appointing all Munsiffs as Rent Controllers. The subsequent notification authorising one of the Munsiffs as a Special Court for hearing rent control matters has not the effect of repealing the earlier notification, it is submitted. We notice that this point is not dealt with either in the judgment of the Rent Controller or the Appellate Authority. The normal presumption to be drawn is that the said point was not argued before those authorities. But, even then, as stated earlier, the de facto doctrine will save the judgment. The Munsiff sitting under the colour of authority has rendered a decision in which he is not personally interested. So, the said decision will be valid in view of the Full Bench decision of this Court in *P.S.Menon v. State of Kerala - AIR 1970 Kerala 165* which was quoted with approval by the Apex Court in *Gokaraju Rengaraju v. State of Andhra Pradesh - AIR 1981 SC 1473.* .

No other point is urged in this revision and, in the result, the Rent Control Revision fails and it is dismissed.

K. BALAKRISHNAN NAIR
JUDGE

HARUN-UL-RASHID,
JUDGE.

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